Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35028
Docket No. SG-34996
00-3-98-3-778

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company (former Southern Pacific)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company (former Southern Pacific):

Claim on behalf of Lead Signalman J. E. Drake for payment at the time and one-half rate for any overtime work required from August 2 - 17, 1997, on the Sandcut Signal Maintainer position, account Carrier violated the current Signalmen's Agreement, particularly Rule 76, when it did not fill this position during the regular employee's vacation. Carrier's File No. 1096421. General Chairman's File No. SWGC-1656. BRS File Case No. 10645-SP."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On August 25, 1997, the Organization filed a claim on behalf of the Claimant, contending that the Carrier failed to provide proper vacation relief per Rule 76 of the Signalmen's Agreement for a Sandcut Maintainer who was on vacation from August 2 through 17, 1997. The Organization argues that Rule 76 provides that the Carrier will make every effort to relieve Signal Maintainer positions when the incumbent is off more than one week, as was the situation in this case. The Organization maintains that the Carrier simply blanked the position and provided no relief, having made no effort at all. The Organization argues that the Claimant is entitled to receive all overtime available on the district during the period of time in question.

The Carrier denied the claim, arguing that Rule 76 provides the Carrier the option of filling vacancies such as the one in question and, in addition, gives the Carrier the proper order of selecting which employee should relieve the position, if the Carrier so chooses. The Carrier also argues that there was no available relief signal employee to fill the position of the vacationing employee. In addition, the Carrier contends that had the Carrier assigned the Claimant to work the position, no one would have been available to perform the Claimant's work. Furthermore, the Carrier contends that the Claimant is not entitled to any overtime on an unrelieved position and that the Claimant was fully employed during the period in question. The Carrier also argues that because the vacationing employee actually performed overtime on August 15 and 16, the Claimant is not entitled to overtime because the Organization failed to show any other overtime that the Claimant could claim in this case. The Carrier also maintains that the doctrine of stare decisis should be applied in this case because the facts of this case and the facts of Third Division Award 31814 are overwhelmingly similar. Thus, the Carrier argues that Award 31814, in which the Organization's claim was denied, should determine the outcome of this case.

The Board reviewed the record in this case and finds that the language of Rule 76 is permissive language that gives the Carrier the option of filling the position of a vacationing employee. Rule 76 states:

> "When Signal Maintainers or Signal Maintenance Foremen are off for periods that exceed one week in duration, they will, if relieved, be relieved by the Relief Signal Employee; and if not available, the senior qualified employee of Class 3 assigned to the Signal or Maintenance Gang.

The Carrier will make every effort to provide vacation relief on Signal Maintainer positions when incumbent is off duty longer than one week." (Emphasis added.)

Consequently, the Board finds that the Carrier has the option of filling the vacancy and in this case chose not to do so.

The Board ruled in Award 31814 involving the same parties that:

"It (Rule 76) does not mandate that vacation absences must be filled, nor does it define to what extent Carrier must go to make an effort to provide relief. Such rule language, absent convincing probative evidence of malfeasance on the part of the Carrier, does not create an absolute enforceable right."

The Board must find that the Carrier did not violate any Rules of the collective bargaining Agreement and specifically did not violate Rule 76. Because the Organization failed to meet its burden of proof in this case, the claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of October, 2000.